

In re Interest of Jeremy U. et al.

Caselaw No.

No. S-19-215

Filed on

Friday, January 3, 2020

Summary:

This case is an appeal out of the Separate Juvenile Court of Douglas County and is affirmed in part and reversed in part, and remanded for further proceedings.

Jeremy is a newborn who tested positive for methamphetamine at the hospital. The state sought to adjudicate his mother as to him and his two siblings, who lived with their grandmother, on the allegation that they "lacked proper parental care." The Juvenile Court found that the State failed to prove risk of harm and declined to adjudicate. The decision as to the two older children is affirmed, but reversed as to Jeremy.

Tiffany is the mother of Jeremy, Savannah, and Ashton. Brandon is the father of Savannah. The State filed four days after Jeremy's birth that the children lacked proper parental care and were at risk of harm due to her use of drugs and failure to provide housing. The Court granted a motion placing Jeremy in the temporary custody of DHHS and later ordered his siblings to be placed in the temporary custody of DHHS. A supplemental petition was filed as to Brandon.

At the adjudication hearing, the caseworker testified that Tiffany admitted to daily use of methamphetamine. Tiffany had legal custody of her children, but Savannah and Ashton were living with Tiffany's mother, where Jeremy was later placed. DHHS had created a safety plan for Tiffany to sign a temporary delegation of parental authority for her children. DHHS did not believe the children needed to be placed in their custody because the safety plan would have kept the children safe.

The Court found that Tiffany and Brandon failed to provide the children with proper parental care, but dismissed the petition due to lack of evidence that the children were at risk of harm, based on *In re Interest of Justine J. et al.*, 286 Neb. 250 (2013).

The State appealed and Tiffany cross-appealed.

Statutory interpretation is a question of law that the appellate court resolves independently and an appellate court reviews juvenile cases de novo on the record.

The Court first looks at Tiffany's cross-appeal that jurisdiction was improper. Venue is immaterial to the matter of whether a juvenile falls within Neb. Rev. Stat. § 43-247. The petition was filed with the correct court and so the Court has proper jurisdiction.

The Court here examines the ground that the juveniles lacked proper parental care by reason of the fault or habits of Tiffany and Brandon under Neb. Rev. Stat. § 43-247(3)(a). There are several grounds available under 43-247(3)(a), but the state only alleged one. The Court here looks at this ground through plain meaning of the statute. Looking at the word parental, the

Court concludes that it means both type and nature of care rather than the person providing it. Proper parental care means:

Providing a home, support, subsistence, education, and other care necessary for the health, morals, and well-being of the child. It commands special care for the children in special need because of mental condition. It commands that the child not be placed in situations dangerous to life or limb, and not be permitted to engage in activities injurious to his health or morals. *State v. Metteer*, 203 Neb. 515 (1979).

That State argued lacking parental care includes abandonment, but it does not, as that is a separate ground. The other argument is that parental means performance by a parent, but the statute phrase says, "by reason of the fault or habits of his or her parent, guardian, or custodian." Therefore, clearly it is not just a parent that can be included.

The Court here says there are two parts to determining "lack of proper parental care"? First, determine if the care is being provided by a parent, guardian, or custodian. If so, the next step is to determine if the lack of care is a result of the fault or habits of the parent, guardian, or custodian. If so, the court should take jurisdiction.

The other important consideration is risk of harm. "While the State need not prove that the child has actually suffered physical harm, Nebraska case law is clear that at a minimum, the State must establish that without intervention, there is a definite risk of future harm." In *re Interest of Kane L. & Carter L.*, 299 Neb. 834 (2018). This aspect was applied in the *Justine J.* case relied upon by the Juvenile Court. See *Justine supra*. In that situation, the mother had four children, but the two youngest lived with the grandparents. In that case, there was no "evidentiary nexus between the neglect" and any definite risk of future harm to [the youngest children].? *Id.* At 286.

In this case, the Court finds that Jeremy has already suffered harm by his exposure to methamphetamine and so there should be an adjudication as to Jeremy. For Savannah and Ashton, the record did not show they were at risk of harm in their grandmother's custody and so did not lack proper parental care. The Court does say that this could change if they are exposed to Tiffany's drug use in the future. The Juvenile Court's decision was proper as to these two children.

The decision is affirmed as to Savannah and Ashton and reversed as to Jeremy. The case is remanded for further proceedings.
